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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SOLERA OAK VALLEY GREENS ASSOCIATION,

Plaintiff and Respondent,

v.

ARISTEA HUPP,

Defendant and Appellant.

E069167

(Super.Ct.No. RIC1515215)

OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard, Judge. Affirmed.

Aristea Hupp, in pro. per., for Defendant and Appellant.

Richardson Harman Ober and Jonathan Davis for Plaintiff and Respondent.

I.

INTRODUCTION

Defendant and appellant, Aristea Hupp,[1] appeals from an order granting in part and denying in part her July 2017 motion for a preliminary injunction (July 2017 PI motion). The trial court granted Aristea a preliminary injunction, enjoining plaintiff and respondent, Solera Oak Valley Greens Association (Solera) from restricting her access to Solera's residential development through security entry gates (referred to herein as the "lock-out"). The trial court, however, denied Aristea's request that the court enjoin Solera from enforcing Solera's pit bull muzzle rule (muzzle rule), requiring any "pit bull" or "pit bull mix" dog to wear a muzzle while on the common areas of the Solera property.

Aristea contends Solera's muzzle rule is arbitrary and capricious; there is no valid or reliable way to determine dog breed other than by DNA; Solera's amended muzzle rule violates California statutory law prohibiting dog breed discrimination; and Solera's lock-out of Aristea violates Civil Code section 4510 of the Davis-Stirling Common Interest Development Act (Davis-Stirling Act)[2] and landlord-tenant law prohibiting a landlord from barring a tenant's ingress and access to property used as a residence.

We conclude Aristea's appeal of the preliminary injunction enjoining the Solera lock-out is improper and moot because Aristea was the prevailing party on this issue.

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[1] Aristea has been in pro. per. throughout these proceedings.

[2] Codified in sections 4000-6150 of the Civil Code.

With regard to the ruling denying a preliminary injunction enjoining Solera from enforcing the original and amended muzzle rule, Aristea's objection to the original muzzle rule is moot because, as Aristea concedes, Solera "rescinded and deleted" the original muzzle rule from Solera's covenants, conditions and restrictions (CC&R's). As to the amended muzzle rule, the same issues were previously adjudicated when the trial court entered a preliminary injunction enforcing the amended muzzle rule on August 18, 2016, and Aristea did not appeal the order. She also has failed to present any new facts or law justifying modifying or dissolving the order. We therefore affirm the judgment.

II.

FACTS AND PROCEDURAL BACKGROUND

Aristea has provided an appendix in lieu of a clerk's transcript and a supplemental appendix as the record on appeal. We have not been provided with a reporter's transcript and Aristea's appendix is incomplete. Further, the statement of the case is inadequate as there are few citations to the record, and the citations are to whole documents, identified by letter. There are no citations to specific page numbers. We recite only those facts either admitted by both parties, or for which we find factual support in the limited record before us. The following facts are also taken from the summary of facts and procedural background included in this court's decision in Hupp's first appeal. (*Hupp v. Solera Oak Valley Greens Assn.* (2017) 12 Cal.App.5th 1300, 1305-1307 (*HuppI*).)

A. *Underlying Prelitigation Facts*

Solera oversees a planned, gated development in the City of Beaumont (the Solera property). Solera is a California corporation that operates through a board of directors on behalf of its shareholders, which includes all Solera property owners. The Solera property has five entrances and six entry gates. Five of the gates are for residents and one entry gate is for guests. The resident gates are activated by remote control. The guest entry gate is not controlled by remote control and may require waiting in line for entry onto the Solera premises. Aristea owns two Solera properties. Aristea lives in one of the homes and her son, Paul Hupp, either rents the other residence from Aristea or lives with Aristea.

In September 2014, Solera adopted a new rule added to Solera's CC&R's, which required pit bulls to be muzzled when walked on the common areas of the Solera property. In November 2014, Paul and Aristea Hupp (the Hupps) notified Solera that they objected to the muzzle rule because it incorrectly stated pit bulls are a dog breed designated by the Centers for Disease Control and Prevention as "'the most "dangerous" dog'" and therefore must be muzzled when on the Solera streets or common areas. The Hupps further asserted the muzzle rule failed to state how to determine if a dog was a pit bull, who would make that determination, and how the rule would be applied.

In December 2014, the Hupps, Solera board members, and management company employees met to address enforcement of the muzzle rule against the Hupps. The Hupps objected to Solera imposing any rule, such as the muzzle rule, that singled out dogs by

breed. Thereafter the Hupps continued to walk their dogs on the Solera property without muzzles. Solera notified the Hupps that they were violating the muzzle rule. In April 2015, Solera imposed a $200 fine on Aristea for walking her dogs in violation of the muzzle rule. The Hupps objected to the fine and refused to pay it.

Five days after the discipline hearing on August 5, 2015, Solera deactivated the Hupps' entrance gate remote controls, preventing the Hupps from entering the Solera property through the five gates operated by remote control. The Hupps refer to this action by Solera as the "lock-out." As a consequence of the lock-out, the Hupps were required to enter the Solera property through the gate used by guests. This required the Hupps to wait in line to enter.

B. *Aristea and Solera's Complaints Seeking Declaratory and Injunctive Relief*

In October 2015, Aristea filed a complaint against Solera, which included causes of action for declaratory and injunctive relief regarding the lock-out and muzzle rule (RIC1512779). Aristea also filed a motion for a preliminary injunction, which the trial court denied.

In December 2015, Solera filed a complaint against Aristea for declaratory relief, injunctive relief, and nuisance (RIC1515215). The trial court later, in October 2017, ordered Aristea and Solera's complaints consolidated, with Aristea's action deemed the master file.

C. *Aristea and Solera's January 2016 Preliminary Injunction Motions*

In January 2016, Solera filed a motion for a preliminary injunction, enjoining the Hupps from violating Solera's CC&R's pet rules (Solera's January 2016 PI motion).

In January 2016, Aristea amended her complaint, adding Davis-Stirling Act claims (Civ. Code, § 4510) and eliminating allegations regarding Paul Hupp. Paul Hupp had been deemed a vexatious litigant before filing the Hupps' complaint and had failed to obtain permission to file the complaint or amended complaint.[3] Aristea also filed another motion for a preliminary injunction.

In March 2016, the trial court heard and granted in part and denied in part Solera's January 2016 PI motion. The court granted Solera's request for a preliminary injunction, enjoining violation of the Solera rules prohibiting (1) walking dogs without a leash, (2) walking more than three dogs at a time, and (3) walking more than two dogs weighing more than 30 pounds together. The court denied Solera's request to enforce the muzzle rule requiring muzzling "'[p]it [b]ull' and '[p]it [b]ull [m]ix'" dogs in common areas of the Solera property. The court concluded the muzzle rule was ambiguous regarding the definition of a pit bull and pit bull mix.

In April 2016, Solera amended its muzzle rule to clarify the definition of a "'[p]it [b]ull' and 'pit [b]ull mixes'" (rules 2, 4, 5, 6, 7, 13, and 17). The amended version closely follows the language in section 43(a) of the San Francisco Health Code. Solera

[3] Later, on August 3, 2017, the trial court declared Aristea also to be a vexatious litigant for all purposes.

continued to bar the Hupps from RFID[4] access to the Solera property through remote controlled Solera security gates.

D. *Aristea and Solera's June and July 2016 Preliminary Injunction Motions*

In June 2016, Aristea filed another motion for a preliminary injunction (June 2016 PI motion) seeking to enjoin Solera from enforcing its amended muzzle rule and the lock-out.

As a result of the Hupps continuing to violate the amended muzzle rule, in July 2016 Solera filed another motion for a preliminary injunction (July 2016 PI motion), enjoining the Hupps from violating Solera's amended muzzle rule (CC&R's Community Rules, Article VIII, 8.03, "Pet Ownership Rules"). Solera asserted that the Hupps' violations constituted a nuisance, were offensive, and obstructed free use of Solera's common areas by interfering with the comfortable enjoyment of the property. Solera further alleged the Hupps' behavior intimidated residents, who "consented to the promulgation of Pet Ownership Rules in order to avoid the intimidation and fear caused by large, un-muzzled, and/or dangerous dogs. Despite the Association's rules, [Aristea], by and through her tenant Paul Hupp, has continued to act in violation of the Governing Documents, to the detriment of [Solera] and its Members. . . . Unless Aristea and her tenant are restrained and enjoined by the Court, continued violation of the Pet Ownership

[4] RFID is an acronym for radio-frequency identification.

Rules are frustrating [Solera's] ability to fulfill its duties and responsibilities to enforce the Governing Documents."

In addition, Solera stated that its muzzle rule restricting unmuzzled pit bulls and/or dangerous dogs in common areas was reasonable, "given that the entire community is composed of elderly residents, ages 55+, who may be at higher risk of injury from a dog attack. [Solera] specifically adopted such rules with the safety of its residents in mind, attempting to avoid potential threats to the elderly persons in the community who may be less able to escape or defend against attacks from large and/or aggressive dog(s)." Solera stated that courts throughout the country had acknowledged "the aggressive and dangerous propensities of pit bulls."

Solera explained that its definition of a pit bull in its amended muzzle rule followed the language of section 43(a) of the San Francisco Health Code, which defines a pit bull as including "any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the physical traits of any one or more of the above breeds, or any dog exhibiting those distinguishing characteristics that conform to the standards established by the American Kennel Club ('AKC') or United Kennel Club ('UKC') for any of the above breeds." Solera argued that this language had been upheld in two cases, in which the federal district courts rejected the contention that the language was vague: *American Canine Foundation v. Sun* (N.D. Cal., Mar. 21, 2007, No. C-06-4713MMC) 2007 WL 878573 at page 9;

Coalition of Human Advocates for K9's and Owners v. City and County of San Francisco (N.D. Cal., Feb. 27, 2007, No. C-06-1887 MMC) 2007 WL 641197, at pages 11-12.

Aristea filed opposition to Solera's July 2016 PI motion. Aristea argued the court should deny injunctive relief to Solera because Solera had failed to follow the CC&R's disciplinary process and the Davis-Stirling Act before filing its motion. Aristea also argued Solera's requested preliminary injunction was not related to Solera's complaint, because the preliminary injunction was founded on the amended muzzle rule, which was the version relied on in Solera's complaint. In addition, Aristea argued Solera acted in an arbitrary and capricious manner when enforcing the CC&R's.

On August 18, 2016, the trial court granted Solera's July 2016 PI motion against the Hupps, enjoining them from violating Solera's amended muzzle rule. Also on August 18, 2016, the trial court heard and denied Aristea's competing June 2016 PI motion. The court found that Aristea "'failed to present any evidence by way of declaration or other admissible evidence regarding the interim harm that she is likely to suffer if the injunction is denied.'"

E. *Aristea's July 2017 PI Motion*

On July 18, 2017, Aristea filed another motion for a preliminary injunction (July 2017 PI motion) enjoining enforcement of the original and amended muzzle rules and enjoining Solera from locking out Aristea. Aristea acknowledged Solera had previously "deleted" the original muzzle rule and had replaced it with the amended version.

Aristea argued in her July 2017 PI motion that the definition of "'[p]it bull' and 'pit [b]ull [m]ix,'" used in Solera's amended muzzle rule, was invalid, unreliable, and an unlawful, unauthorized use and violation of the United Kennel Club (UKC) and American Kennel Club's (AKC) copyrighted proprietary breed standards. Aristea attached to her motion copies of letters from the officers of UKC and AKC stating that Solera was unauthorized to use UKC and AKC's copyrighted breed standards in the amended muzzle rule. Aristea also attached a declaration by a professor of animal behavior at Western University of Health Sciences in Pomona, stating that "'[t]here is virtually no ability to determine a dog's breed through 'visual identification.'"

Aristea further argued that Solera's acts of enacting and enforcing the original and amended muzzle rules were "arbitrary and capricious." In addition, Aristea argued that there is no such breed as a pit bull, and Solera failed to state (1) how to determine if a dog is a pit bull or pit bull mix, (2) who determines this, and (3) how Solera would apply the muzzle rule. Aristea also argued that California law prohibits imposing any rule or regulation singling out dogs by breed.

With regard to the lock-out, Aristea argued that, beginning in August 2015, Solera locked her out of the Solera property by preventing her from using the five remote controlled entry gates to the Solera property, and forced her to use the guest entrance gate. Aristea claimed the guest entry gate required her to wait in line up to 30 minutes before entering the Solera property. This caused her physical hardship, including intense lower back pain from osteoporosis.

On July 27, 2017, Solera filed opposition to Aristea's July 2017 PI motion. Solera argued that Aristea was raising the same arguments rejected by the trial court when it denied her previous, "nearly identical" 2016 June PI motion on August 18, 2016.

In response to Solera's opposition, Aristea filed a reply brief, arguing that Solera had failed to respond to the proposition that the amended muzzle rule was an unlawful violation of AKC and UKC's copyrighted proprietary breed standards. Aristea also argued that, according to her expert, it is impossible to determine a dog's breed based on physical characteristics.

Aristea filed a supplemental declaration stating that she is 80 years old and has osteoporosis, which causes her to suffer intense lower back pain, exacerbated by being forced to enter the Solera property through the guest gate. Aristea further stated that she owns two Solera properties and must travel an additional 4.1 miles to enter through the main gate to reach one of her properties. In addition, Aristea stated that Solera's claim that a pit bull is the most dangerous dog as determined by the Center of Disease Control is "false, arbitrary and capricious," because there is no Center of Disease Control and a "'[p]it [b]ull'" is not a breed.

On September 1, 2017, the trial court heard and granted Aristea's July 2017 PI motion to enjoin Solera from "'[l]ocking-[o]ut'" Aristea from the Solera property by shutting down the RFID remote control transponder for the entry gates. In addition, the trial court denied Aristea's request to enjoin Solera from enforcing Solera's original and

amended muzzle rule, requiring any "'pit bull' or 'pit bull mix'" dog to wear a muzzle while on the common areas of Solera.

On November 27, 2017, the trial court entered an order on Aristea's July 2017 PI motion, (1) enjoining Solera from restricting Aristea's access to the Solera property through the security gates, and (2) denying Aristea's motion requesting the court to modify or dissolve the previous muzzle rule injunction. The trial court concluded Aristea had not shown a change of material facts upon which the former August 18, 2016, injunction was granted.

Aristea filed a notice of appeal of the September 1, 2017, ruling granting in part and denying in part her 2017 July PI motion. This court deemed Aristea's appeal was to the trial court's order entered on November 27, 2017.

III.

NONCOMPLIANCE WITH APPELLATE RULES

Solera argues Aristea's appellant's opening brief is not in compliance with the required appellate procedure of citing to the record on appeal and providing a complete record. We agree. Aristea has failed to satisfy this basic procedural requirement which is necessary to advance her claims of error and is intended to assist this court's efficiency in deciding an appeal. Aristea's briefs are for the most part devoid of proper, specific citations to the clerk's transcript. Aristea also has not provided this court with a reporter's transcript, and the appellant's appendix is incomplete.

Rule 8.204(a)(1)(C) of the California Rules of Court[5] provides that all appellate briefs must "[s]upport any reference to a matter in the record by a citation to the volume and *page number of the record where the matter appears*. If any part of the record is submitted in an electronic format, citations to that part must identify, with the same specificity required for the printed record, the place in the record where the matter appears." (Italics added.) This is required particularly as to the summary of facts and procedural background, which is limited to matters in the record. (Rule 8.204(a)(2)(C).) Aristea has failed to adhere to this mandatory requirement. Her citations to the appellant's appendix are to the letter of the document referenced in the appellant appendix. Aristea's 241-page appellant's appendix includes 10 documents, designated A through J. Many of the documents include multiple attachments or exhibits. Citing only to the document letter does not satisfy rule 8.204(a)(1)(C), which requires a specific citation to matter in the record, by the page number of the record where the matter appears.

"It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations." (*Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205; see also rule 8.204(a)(1)(C).) "The appellate court is not required to search the record on its own seeking error." (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) "If a party fails to support an

[5] Undesignated rule references are to the California Rules of Court, with the exception of reference to the "muzzle rule."

argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; accord, *Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 391.)

Aristea is not exempt from compliance with the foregoing record citation rules because she is representing herself on appeal in propria persona. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) "[A] party may choose to act as his or her own attorney. [Citations.] '[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]' [Citation.] Thus, as is the case with attorneys, [propria persona] litigants must follow correct rules of procedure. [Citations.]" (*Id*., at pp. 1246-1247; see also *Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193 [self-represented party is held to the same restrictive procedural rules as an attorney].)

Aristea's appellant's appendix is also in violation of rule 8.124 (b)(1)(B), which requires the appendix to include all documents necessary for propria persona consideration of the issues. Aristea has failed to include in the record on appeal all necessary documents, including her June 2016 PI motion or the trial court's ruling on the motion.

In response to Solera's objection to the incomplete appellant's appendix, Aristea excuses its defects on the ground that Solera could have filed its own appendix. But Rule 8.124(b)(1)(B) clearly requires an appellant's appendix to include any item "necessary

for a proper consideration of the issues" and "any item that the appellant should reasonably assume the respondent will rely on." Aristea's June 2016 PI motion and ruling on the motion are necessary for proper consideration of the issues, particularly the issue of whether Aristea improperly raised the same issues in her July 2017 PI motion, when the issues had been previously decided and there were no new material facts or law supporting modification of the previous August 18, 2018, rulings.

Even if we were to overlook the deficiencies in the record and Aristea's noncompliance with appellate procedural rules, we reject Aristea's appeal on the merits, as explained below.

IV.

STANDARD OF REVIEW

We review an order granting or denying a preliminary injunction under the abuse of discretion standard, to determine whether the trial court abused its discretion in evaluating the two interrelated factors pertinent to issuance of a preliminary injunction: "(1) the likelihood that the plaintiff[] will prevail on the merits at trial, and (2) the interim harm that the [plaintiff is] likely to sustain if the injunction were denied as compared to the harm the defendant is likely to suffer if the preliminary injunction were issued. [Citations.] Abuse of discretion as to either factor warrants reversal. [Citation.]" (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1299.) When the likelihood of prevailing on the merits turns on a question of law such as statutory construction, the standard of review is de novo. The de novo standard requires this court

to determine whether the trial court correctly interpreted and applied the law. (*Id*. at p. 1300.)

In reviewing a preliminary injunction ruling, we look at the evidence presented to determine if there was substantial support for the trial court's ruling. "Where the evidence before the trial court was in conflict, we do not reweigh it or determine the credibility of witnesses on appeal. '[T]he trial court is the judge of the credibility of the affidavits filed in support of the application for preliminary injunction and it is that court's province to resolve conflicts.' [Citation.] Our task is to ensure that the trial court's factual determinations, whether express or implied, are supported by substantial evidence. [Citation.] Thus, we interpret the facts in the light most favorable to the prevailing party and indulge in all reasonable inferences in support of the trial court's order. [Citations.]" (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625; accord, *Alliant Ins. Services, Inc. v. Gaddy*, *supra*, 159 Cal.App.4th at p. 1300.)

V.

PIT BULL MUZZLE RULE

Aristea contends the trial court erred in leaving in place the amended muzzle rule, which Aristea argues is arbitrary and capricious, improperly defines pit bull as a breed, and unlawfully discriminates based on breed. She also argues Solera improperly restricted her access to the Solera properties, in violation of the Davis-Stirling Act and landlord tenant law. Aristea also maintains the amended muzzle rule is inapplicable to her because there is no evidence she ever violated it. She further asserts that she is

seeking a final adjudication on this matter.

A. *Aristea's Request for a Final Adjudication*

Of course, a preliminary injunction is preliminary, not final. Therefore, even if Aristea had prevailed on her July 2017 PI motion, or prevails on this appeal, the ruling would not constitute a final adjudication on any of the ultimate rights in controversy between Aristea and Soltera, including controversies regarding the amended muzzle rule and lock-out. This is because there has been no final determination by the trial court of the underlying facts or merits of Solera and Aristea's consolidated actions seeking declaratory relief and permanent injunctive relief regarding the lock-out and muzzle rule.

The purpose of a preliminary injunction is to prevent "'*interim* harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued.'" (*ITV Gurney Holding Inc. v. Gurney* (2017) 18 Cal.App.5th 22, 28-29, italics added.) When reviewing a preliminary injunction ruling, we therefore do not "decide, as on appeal from a final judgment, whether plaintiffs were entitled to the relief they received [or did not receive]. . . . [¶] The abuse-of-discretion standard acknowledges that the propriety of preliminary relief turns upon difficult estimates and predictions from a record which is necessarily truncated and incomplete. . . . The evidence on which the trial court was forced to act may thus be significantly different from that which would be available after a trial on the merits." (*Butt v. State of California* (1992) 4 Cal.4th 668, 678, fn. 8.)

It is therefore inappropriate for this court in the instant appeal to provide a definitive opinion on the merits of the underlying controversy between the parties. This is because "'[t]he granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy. It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or should not be restrained from exercising the rights claimed by him. Indeed, when the cause is finally tried it may be found that the facts require a decision against the party prevailing on the preliminary application. *It therefore follows that an appellate court in passing upon the propriety of the issuance or dissolution of a preliminary injunction will not determine the merits of the case in advance of the trial*, and its decision as to the propriety of granting the writ is no intimation of what the judgment of the lower court should be at the final hearing; nor is it the law of the case in a subsequent appeal from the final judgment on the merits.' (Emphasis added.)" (*French Art Cleaners v. St. Bd., etc. Cleaners* (1949) 91 Cal.App.2d 890, 897, quoting *Paul v. Allied Dairymen, Inc.* (1962) 209 Cal.App.2d 112, 121; accord, *Jomicra, Inc. v. California Mobile Home Dealers Assn.* (1970) 12 Cal.App.3d 396, 401.)

Here, Aristea is appealing the trial court's ruling on her motion for a preliminary injunction. She is not appealing a ruling on the merits of Solera's and Aristea's underlying controversies alleged in their complaints. In the instant appeal, this court will thus only address the issue before it, whether the trial court abused its discretion when ruling on Aristea's July 2017 PI motion.

B. *No Showing of New Material Facts or Law*

Aristea's July 2017 PI motion raises the same issues raised in Aristea and Solera's motions decided on August 18, 2016. Aristea has failed to demonstrate any changed material facts or law justifying modification or dissolution of the August 18, 2016, preliminary injunction rulings on the amended muzzle rule.

"[A] trial court has inherent power to modify or vacate a permanent preventive injunction upon a showing that 'there has been a change in the controlling facts upon which the injunction rested, or the law has been changed, modified or extended, or where there the ends of justice would be served by modification.' [Citation.] We recognized in that case that although 'it is the long established policy of the law to . . . accord finality to judgments,' the trial courts must be given power to modify or dissolve preventive injunctions issued by them. This power is necessary because a preventive injunction is fundamentally different from any other judgment or decree: it 'is in essence of an executory or continuing nature, creating no right but merely assuming to protect a right from unlawful and injurious interference.' [Citation.] When it can be shown that circumstances have so changed that an injunction is no longer necessary or desirable, the trial court has power to amend it in the interest of providing justice for all parties in interest. 'The court's power in this respect is an inherent one.' [Citation.]" (*Union Interchange, Inc. v. Savage* (1959) 52 Cal.2d 601, 604, quoting *Sontag Chain Stores Co. v. Superior Court* (1941) 18 Cal.2d 92, 94-95.)

As the trial court explained in its November 27, 2017, order, a preliminary injunction is subject to modification or dissolution upon a showing of either (1) a material change in the facts upon which the preliminary injunction was granted, (2) the law upon which the preliminary injunction was granted has changed, or (3) "the ends of justice would be served" by the modification or dissolution. (*Union Interchange, Inc. v. Savage*, *supra*, 52 Cal.2d at p. 604, quoting *Sontag Chain Stores Co. v. Superior Court*, *supra*, 18 Cal.2d at p. 95.)

The record shows that Aristea raised the same issues regarding the muzzle rule in both her June 2016 PI motion and her July 2017 PI motion. This court is unable to compare the court proceedings and rulings because Aristea has not included in the record on appeal her June 2016 PI motion, the trial court's minute order, a court order on the motion, or the reporter's transcript for any of the proceedings. Nevertheless, even in the absence of these items, the record on appeal is sufficient to support the trial court's denial of Aristea's request to enjoin enforcement of the amended muzzle rule on the ground Aristea has not shown a material change of material facts or law upon which the injunction was granted. Aristea has not refuted the trial court's determination, in part because she has failed to provide an adequate record on appeal, which should have included her June 2016 PI motion and the trial court's ruling on the motion.

Where the record is incomplete, we also presume as correct the trial court's findings and order on Aristea's July 2017 PI motion, and "all intendments and presumptions are indulged in its favor." (*Hirshfield v. Schwartz* (2001) 91 Cal.App.4th

749, 765.) We therefore conclude the trial court did not abuse its discretion in denying her July 2017 PI motion.

Even though the appellant's appendix is deficient, the documents in the record on appeal demonstrate that Aristea's June 2016 PI motion and July 2017 PI motion raise the same issues and request the same preliminary injunctive relief regarding the muzzle rule. Such documents in the record include: (1) Solera's July 2016 PI motion heard on August 18, 2016, concurrently with Aristea's June 2016 PI motion; (2) Aristea's opposition to Solera's July 2016 PI motion; (3) the trial court's August 18, 2016, order on Solera's July 2016 PI motion; and (4) Aristea's opposition to Solera's July 2017 PI motion.

Solera states in its opposition to Aristea's July 2017 PI motion, that Aristea's July 2017 motion is "nearly identical" to her June 2016 motion, which the trial court denied on August 18, 2016. Aristea has failed to refute this. Furthermore, it can be reasonably deduced from the August 18, 2016, order granting Solera's June 2016 PI motion to enforce the amended muzzle rule, that the trial court denied Aristea's concurrent motion for a preliminary injunction enjoining enforcement of the amended muzzle rule, which is the same relief Aristea requested in her July 2017 PI motion.

In Aristea's July 2017 PI motion, Aristea may have presented for the first time evidence regarding UKC and AKC's objections to Solera using their definition of a pit bull in the Solera muzzle rule. However, there is no way of confirming the evidence was not presented or available during the 2016 proceedings, because the record does not include Aristea's June 2016 PI motion or the reporter's transcript of the hearing. Even if

the evidence was not previously produced, the trial court did not abuse its discretion in finding that the evidence did not show a material change of facts or law justifying modification or dissolution of the August 18, 2016, preliminary injunction.

We thus conclude the trial court did not abuse its discretion when ruling on September 1, 2017, that Aristea failed to present any new material facts or law justifying modifying or dissolving the trial court's August 18, 2016, preliminary injunction order enforcing the amended muzzle rule.

VI.

LOCK-OUT PRELIMINARY INJUNCTION

Aristea's objection to the trial court's September 1, 2017, ruling granting a preliminary injunction enjoining Solera from restricting her access to the Solera property, is moot because the lock-out issue is no longer a justiciable controversy on appeal.

"California courts will decide only justiciable controversies. [Citations.] The concept of justiciability is a tenet of common law jurisprudence and embodies '[t]he principle that courts will not entertain an action which is not founded on an actual controversy . . . .' [Citations.] . . . [A] case that presents a true controversy at its inception becomes moot '"if before decision it has, through act of the parties or other cause, occurring after the commencement of the action, lost that essential character"' [citation]." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.)

It is the duty of the court to decide actual controversies by entering a judgment which can be carried into effect, and not to give an opinion upon a moot question or declare principles or rules of law which cannot affect the matter at issue. It necessarily follows that when an event occurs which renders it impossible for the court to grant the moving party any effectual relief, the matter is moot and the court will not proceed to formal judgment on the matter. (*Wilson & Wilson v. City Council of Redwood City, supra*, 191 Cal.App.4th at p. 1574.) "The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief." (*Ibid.*) In the instant case, the lock-out issue became moot after the trial court decided the lock-out issue in Aristea's favor, and Solera is not appealing the ruling.

Aristea nevertheless urges this court "to *enjoin* the ability of an HOA [homeowners association], *any* HOA, to LOCK-OUT and 'constructively evict' dues paying HOA members, even if the LOCK-OUT is based on *allegations* of CCR violations." Such relief by this court is inappropriate at this stage of the proceedings. Aristea is requesting permanent relief, whereas the matter at issue on appeal is the trial court's ruling on a preliminary injunction, which is not a permanent adjudication of the merits of the underlying claims.

In addition, Aristea is requesting this court to provide relief beyond that requested in her July 2017 PI motion. With regard to the lock-out, Aristea requested in her July 2017 PI motion that the court enjoin Solera "from restricting access to [Aristea's] properties within SOLERA by shutting down access and 'LOCKING OUT' [Aristea]

from the SOLERA security gates." The trial court granted Aristea this relief. Any additional relief beyond this exceeds the scope of injunctive relief requested in Aristea's pleadings, and thus, granting such relief would violate Solera's due process rights to notice of potential injunctive action.

VII.

DISPOSITION

The judgment is affirmed. Solera is awarded its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.